

1 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**
2 Diane M. Doolittle (CA Bar No. 142046)
3 dianedoolittle@quinnmanuel.com
4 Sara Jenkins (CA Bar No. 230097)
5 sarajenkins@quinnmanuel.com
6 555 Twin Dolphin Drive, 5th Floor
7 Redwood Shores, CA 94065
8 Telephone: (650) 801-5000
9 Facsimile: (650) 801-5100

10 Andrew H. Schapiro (admitted *pro hac vice*)
11 andrewschapiro@quinnmanuel.com
12 Teuta Fani (admitted *pro hac vice*)
13 teutafani@quinnmanuel.com
14 191 N. Wacker Drive, Suite 2700
15 Chicago, IL 60606
16 Telephone: (312) 705-7400
17 Facsimile: (312) 705-7401

18 Stephen A. Broome (CA Bar No. 314605)
19 stephenbroome@quinnmanuel.com
20 Viola Trebicka (CA Bar No. 269526)
21 violatrebicka@quinnmanuel.com
22 Crystal Nix-Hines (CA Bar No. 326971)
23 crystalnixhines@quinnmanuel.com
24 Alyssa G. Olson (CA Bar No. 305705)
25 alyolson@quinnmanuel.com
26 865 S. Figueroa Street, 10th Floor
27 Los Angeles, CA 90017
28 Telephone: (213) 443-3000
Facsimile: (213) 443-3100

1 Josef Ansorge (admitted *pro hac vice*)
2 josefansorge@quinnmanuel.com
3 Xi (“Tracy”) Gao (CA Bar No. 326266)
4 tracygao@quinnmanuel.com
5 Carl Spilly (admitted *pro hac vice*)
6 carlspilly@quinnmanuel.com
7 1300 I Street NW, Suite 900
8 Washington D.C., 20005
9 Telephone: (202) 538-8000
10 Facsimile: (202) 538-8100

11 *Counsel for Defendant Google LLC*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 CHASOM BROWN, et al., on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 vs.

19 GOOGLE LLC,

20 Defendant.

21 Case No. 4:20-cv-03664-YGR-SVK

22 **GOOGLE’S ADMINISTRATIVE**
23 **MOTION TO SEAL JOINT STATUS**
24 **REPORT PURSUANT TO DKT. NO. 830**

25 Referral: Hon. Susan van Keulen, USMJ

26 PATRICK CALHOUN, et al., on behalf of
27 themselves and all others similarly situated,

28 Plaintiffs,

1 vs.

2 GOOGLE LLC,

3 Defendant.

4 Case No. 4:20-cv-05146-YGR-SVK

5 **GOOGLE’S ADMINISTRATIVE**
6 **MOTION TO SEAL JOINT STATUS**
7 **REPORT PURSUANT TO DKT. NO. 960**

8 Referral: Hon. Susan van Keulen, USMJ

9 Case No. 4:20-cv-03664-YGR-SVK
10 Case No. 4:20-cv-05146-YGR-SVK

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”)
 3 respectfully seeks to seal certain portions of the Joint Status Report Pursuant to *Brown* Dkt. 830 and
 4 *Calhoun* Dkt. 960 (“Status Report”) filed in both cases, which contains non-public, highly sensitive
 5 and confidential business information that could affect Google’s competitive standing and may
 6 expose Google to increased security risks if publicly disclosed, including details related to Google’s
 7 internal projects, internal data sources, and their proprietary functionalities, as well as internal
 8 metrics, which Google maintains as confidential in the ordinary course of its business and is not
 9 generally known to the public or Google’s competitors. This information is highly confidential and
 10 should be protected.

11 This Administrative Motion pertains to the following information contained in the Status
 12 Report:

13 Document	14 Portions to be Filed Under Seal	15 Party Claiming Confidentiality
16 Joint Status Report Pursuant to <i>Brown</i> Dkt. No. 830; Joint Status Report Pursuant to <i>Calhoun</i> Dkt. No. 960	17 Highlighted Portions at: Pages 1:11-12, 1:14, 1:23, 1:25, 1:28, 2:1-3, 2:5-6, 2:9-10, 2:13-15, 2:18-19, 2:24, 3:5-9, 3:12, 3:19, 4:3-6, 4:8, 4:16, 4:27, 5:2, 5:13, 5:27, 6:13-14, 6:16-22, 6:24-28, 7:1-2, 7:7, 7:9, 7:12	18 Google
19 Exhibit 1 to Trebicka Declaration – Jan. 10, 2023 <i>Brown</i> Hearing Transcript	20 Highlighted Portions at: Pages 7:15-16, 8:9-10, 8:18, 8:21-22, 9:2-3, 9:5, 9:25, 12:5, 12:18, 12:25, 13:4, 15:16- 18, 15:25, 16:8, 16:11-12, 17:6, 17:8, 18:6- 10, 18:13-16, 18:18, 19:17-18, 20:11, 21:23-24, 22:25, 26:10, 28:10, 28:21-22, 29:1-2, 29:4-7, 29:10-11, 29:16, 30:4, 31:23, 34:22-24, 35:19, 35:22-23, 35:25	22 Google
23 Exhibit 2 to Trebicka Declaration – Jan. 26, 2023 Letter to <i>Brown</i> and <i>Calhoun</i>	24 Highlighted Portions at: Pages 1-6	25 Google
26 Exhibit 3 to Trebicka Declaration – Jan. 28, 2023 Letter to <i>Brown</i> and <i>Calhoun</i>	27 Highlighted Portions at: Pages 1-2	28 Google

1 2 3 4 5 6 7 8	Exhibit 4 to Trebicka Declaration – Jan. 30, 2023 Letter to <i>Brown</i> and <i>Calhoun</i> Trebicka Exhibit 5 – Jan. 10, 2023 <i>Calhoun</i> Hearing Transcript Trebicka Exhibit 6 – Jan. 23, 2023 correspondence	Highlighted Portions at: Pages 1-4 Highlighted Portions at: Pages 5:25, 6:2, 6:4, 6:13, 8:1, 8:3, 17:11, 18:20, 18:25, 19:1-2, 21:1, 21:22, 22:21, 25:5, 25:17, 25:20, 25:23, 26:4, 26:8-10, 26:16-17, 28:1 Highlighted Portions at: Pages 1, 3-4	Google Google Google
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II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion, such as the underlying motion here, must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar.

1 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug.
 2 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding
 3 [Defendant]’s products” under “good cause” standard) (van Keulen, J.). Although the materials that
 4 Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only
 5 consider whether these materials meet the lower “good cause” standard.

6 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

7 Courts have repeatedly found it appropriate to seal documents that contain “business
 8 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 9 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 10 “contain[] confidential information about the operation of [the party’s] products and that public
 11 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 12 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 13 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 14 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 15 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 16 standard where that information could be used to the company’s competitive disadvantage”)
 17 (citation omitted). Courts in this district have also determined that motions to seal may be granted
 18 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 19 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 20 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

21 Here, the Status Report contains confidential and proprietary information regarding highly
 22 sensitive features of Google’s internal systems and operations that Google does not share
 23 publicly. Specifically, this information provides details related to Google’s internal projects,
 24 internal data sources, and their proprietary functionalities, as well as internal metrics. Such
 25 information reveals Google’s internal strategies, system designs, and business practices for
 26 operating and maintaining many of its important services while complying with its legal and privacy
 27 obligations.

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1 Public disclosure of the above-listed information would harm Google’s competitive standing
 2 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 3 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 4 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 5 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 6 sensitive business information related to Google’s processes and policies to ensure the integrity and
 7 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 8 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 9 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 10 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 11 motion to seal as to “internal research results that disclose statistical coding that is not publicly
 12 available”).

13 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 14 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
 15 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 16 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
 17 affects how messages are transmitted” because if made public, it “could lead to a breach in the
 18 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
 19 identified information.

20 The information Google seeks to redact, including information related to Google’s internal
 21 projects and data logging systems, and internal metrics, is the minimal amount of information
 22 needed to protect its internal systems and operations from being exposed to not only its competitors
 23 but also to nefarious actors who may improperly seek access to and disrupt these systems and
 24 operations. The “good cause” rather than the “compelling reasons” standard should apply but under
 25 either standard, Google’s sealing request is warranted.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the Court should seal the identified portions of the Status Report.
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QUINN EMANUEL URQUHART &
2 SULLIVAN, LLP

3 By /s/ Andrew H. Schapiro

4 Andrew H. Schapiro (admitted *pro hac vice*)
5 andrewschapiro@quinnemanuel.com
6 Teuta Fani (admitted *pro hac vice*)
7 teutafani@quinnemanuel.com
8 191 N. Wacker Drive, Suite 2700
9 Chicago, IL 60606
10 Telephone: (312) 705-7400
11 Facsimile: (312) 705-7401

12 Stephen A. Broome (CA Bar No. 314605)
13 stephenbroome@quinnemanuel.com
14 Viola Trebicka (CA Bar No. 269526)
15 violatrebicka@quinnemanuel.com
16 Crystal Nix-Hines (CA Bar No. 326971)
17 crystalnixhines@quinnemanuel.com
18 Alyssa G. Olson (CA Bar No. 305705)
19 alyolson@quinnemanuel.com
20 Maria Hayrapetian (CA Bar No. 315797)
21 mariehayrapetian@quinnemanuel.com
22 865 S. Figueroa Street, 10th Floor
23 Los Angeles, CA 90017
24 Telephone: (213) 443-3000
25 Facsimile: (213) 443-3100

26 Diane M. Doolittle (CA Bar No. 142046)
27 dianedoolittle@quinnemanuel.com
28 Sara Jenkins (CA Bar No. 230097)
29 sarajenkins@quinnemanuel.com
30 555 Twin Dolphin Drive, 5th Floor
31 Redwood Shores, CA 94065
32 Telephone: (650) 801-5000
33 Facsimile: (650) 801-5100

34 Josef Ansorge (admitted *pro hac vice*)
35 josefansorge@quinnemanuel.com
36 Xi (“Tracy”) Gao (CA Bar No. 326266)
37 tracygao@quinnemanuel.com
38 Carl Spilly (admitted *pro hac vice*)
39 carlspilly@quinnemanuel.com
40 1300 I Street NW, Suite 900
41 Washington D.C., 20005
42 Telephone: (202) 538-8000
43 Facsimile: (202) 538-8100

44 Jomaire A. Crawford (admitted *pro hac vice*)

1 jomairecrawford@quinnmanuel.com
2 51 Madison Avenue, 22nd Floor
3 New York, NY 10010
4 Telephone: (212) 849-7000
5 Facsimile: (212) 849-7100

6 Jonathan Tse (CA Bar No. 305468)
7 jonathantse@quinnmanuel.com
8 50 California Street, 22nd Floor
9 San Francisco, CA 94111
10 Telephone: (415) 875-6600
11 Facsimile: (415) 875-6700

12 *Attorneys for Defendant Google LLC*

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